

Planning & Zoning Commission Meeting
Milton Theatre, 110 Union Street
Tuesday, October 21, 2008
7:00 PM

1. Virginia Weeks: It being 7:00 PM I ask for a roll call of members present:

Ted Kanakos	Present
Al Perkins	Present
Ed Kost	Present
Virginia Weeks	Present
Louise Frey	Present

Virginia Weeks: There being a quorum, the meeting is convened.
2. Additions or Corrections to the Agenda
Virginia Weeks: Are there any additions or corrections to the Agenda?
3. Approval of the Agenda
Virginia Weeks: Is there a motion for approval of the Agenda?
Al Perkins: I make a motion that we accept the agenda as written.
Louise Frey: Second.
Virginia Weeks: All in favor. Having carried unanimously, the Agenda is approved.
4. Additions or Corrections to the Minutes
Virginia Weeks: Are there any additions or corrections to the Minutes of last month's meeting, which was included in your packet?
5. Approval of Minutes
Virginia Weeks: There being no corrections, may I have a motion to approve the minutes?
Louise Frey: I make a motion to approve the minutes as submitted.
Al Perkins: Second.
Virginia Weeks: All in favor. Having carried unanimously, the Minutes are approved.
6. Business
Virginia Weeks: The first point of business is a Conceptual Plan Review of 524 Union Street. The Applicant, Civil Engineering Associates, LLC, is requesting a Conceptual Plan Review for the construction of an additional commercial building on the property located at 524 Union Street, further identified by Sussex County Tax Map and Parcel Number 2-35-14.15-20.00. The property is zoned C-1 Commercial. Would you gentleman like to come up? Please use the microphone.
Brian Pinkerton: Good evening. I'm Brian Pinkerton with Civil Engineering Associates and with me is Ron Sutton, a principle at our firm. I would like to

start by reviewing the existing additions of the site just a little bit. Currently there is a vacant medical office building on-site of approximately 1,452 sq. ft. There is approximately 0.15 acres of paved parking, which you can see extends its full width along the frontage with Tobin Drive. Existing on-site there is approximately 1/4 acre of grass and other landscaped areas and open space. Our client is proposing to further develop the site. He would like to maintain the existing medical office building. It's my understanding he intends to lease it as a medical use to future tenants. He also would like to build a new fast food style restaurant building of 2,062 sq. ft.; including a refrigerator unit located to the west end of the site. The plan, in concept, includes an 11' wide drive-thru lane with its exit being directly on to Tobin Drive. Along with this development, we've included the addition of a new 5' sidewalk along the projects frontage with Tobin Drive, to tie into the existing sidewalk along Union Street. This site being located a little further in Town and not so much off the main thoroughfare of Route 16 we envision this site to generate a lot of pedestrian traffic to local neighborhoods and community residents who we anticipate would frequent the new business.

Virginia Weeks: Excuse me, one moment. I would just like the record to reflect that Commissioner Filicko has arrived.

Brian Pinkerton: Stormwater management we intend to use green technology, BMP's; bio-filtration; bio-retention and likely some underground storage and infiltration to treat stormwater run-off from the proposed site. Of course, along with all the improvements, this concept plan does include some requested variances that we understand would need to go before the Board of Adjustment for approval. Those variances include from Zoning Section 5.9 Transition Yard along Tobin Drive. The existing developed portion of the site in the parking area, currently does not meet the 15' transition yard along Tobin Drive. We request permission to keep that existing non-conformancy; improved by the addition of a sidewalk and approximately 2-1/2' of grass before entering the improved parking lot and then a portion of proposed parking space number 1 would also need a variance from the required transition yard. Off-street parking requirements currently have sixteen on-site spaces proposed; with an available 7-9 spaces on-street along Tobin Drive that we didn't count for obvious reasons, because they are not on-site. We would obviously need a variance for the required parking. I believe it's 29 that would be required for both use as a medical office and a restaurant facility. Twenty-two, I believe, if the hours of operation can be proven to be staggered, for shared use parking. The third variance requested would be for the 4' landscape buffer between the right-of-way and the parking lot. Again, along the existing parking lot boundary currently 100% paved in that 4' required buffer; we'd like the variance to include a 5' sidewalk and 2-1/2' of grass, before entering the parking lot. And, lastly, the minimum distance from the service window in the drive-thru lane to the street right-of-way on Tobin Drive, required being 60', we would propose 25' due to the site constraint space limitations. That, in a nutshell, sums up the proposed concept plan at this time. We do have copies of the Town Planner's and Town Engineer's comments and at this point we would be happy to entertain further comments or questions.

Virginia Weeks: Thank you. What I would like to do tonight, if the Board is in agreement, is that at this time, I would like to take the URS report and go through it point by point and we should discuss, as she has it bound, all the landscaping problems; all the setback problems; all the parking problems; but one problem at a time, one variance at a time, rather than just scattering all over and then at the end I will ask you two how you feel about it and what your thoughts are and we do not take a vote tonight and that would be the end of the meeting. Is that all right with the Board? Debbie, do you want to take us through your report, starting at the beginning?

Debbie Pfiel: Madame Chairman, do you want me to go by topic?

Virginia Weeks: Yes, please.

Debbie Pfiel: I'm under Zoning Regulations. The drive-in is permitted; the eating establishment restaurant standard fast food is permitted in the zoning district. The setbacks are where we run into the first question, as far as what the Planning Commission wants to determine as the front yard. The front yard setback is 30' from the building line on Union and that's a state road; 15' on Tobin, if you use that as a side street; and a side yard of 25' from Parcel 24 that's zoned R-1 and a rear yard of 15'. Parcel 1901 is zoned R-2. The first question we probably want to discuss is what the Planning Commission feels is determined as the front; and I think the City Engineer has the same comment on determining.

Virginia Weeks: This says that up to now the site has an address of 524 Union Street; although the building faces north. Does anyone on the Commission have a thought? Ted, do you have any thoughts on it?

Ted Kanakos: No, not at this time.

Virginia Weeks: Mr. Perkins?

Al Perkins: No, not on that issue. No.

Virginia Weeks: Mr. Kost?

Ed Kost: Not at this time.

Virginia Weeks: The Chair will pass on this one.

Michael Filicko: Pass.

Virginia Weeks: Mrs. Frey?

Louise Frey: The address of the building is Union Street? Then, in my opinion, the front of the building is Union Street.

Virginia Weeks: If we make it Union Street, it is going to be a non-conforming building with 30' setbacks.

Louise Frey: If that's what it is; that's what it is.

Debbie Pfiel: Madame Chair, Debbie Pfiel. If the front is determined by the Planning Commission to be on Union Street; the front yard setback is supposed to be 30' from Union; the side front yard setback off of Tobin, would then be 15' by your Code. It would be able, under that Code, to meet the requirements. So it wouldn't be necessarily non-conforming.

Michael Filicko: The existing building would remain non-conforming.

Debbie Pfiel: The existing building is non-conforming.

Virginia Weeks: The side setback would be 15' and the side behind the building should be 25', correct?

Debbie Pfiel: Correct.

Virginia Weeks: It would be 15' to the townhouses on Tobin Drive.

Debbie Pfiel: Correct; as a rear setback.

Ed Kost: I just want to make sure I want to understand what you just said. When you said the side yard setback is 25' that would be the side yard facing the Jefferson property?

Debbie Pfiel: If you look on my letter, I put the parcel numbers so you could be able to match it up; but, Parcel 24 which is the Jefferson property is zoned R-1, would be 25'. That's correct.

Ed Kost: Then the rear yard, would be facing the existing townhouses.

Debbie Pfiel: Correct. That would be Parcel 1901 and that would be 15', zoned R-2.

Virginia Weeks: Let's leave it as it is at the moment and go on then, please.

We'll assume that we're going to leave it as 524 Union Street. Is everybody in agreement with that? Although there is no vote tonight.

Debbie Pfiel: Next item I have is on the next page, which is page 2/3. The Applicant has already brought this up, that they have not met the transition yard requirement. They will be seeking a variance from the requirement. It's also in your plan; page C-2 on the bottom right hand side. That is all I have as far as just general comments for zoning.

Virginia Weeks: Did I read something that when the side yard faces a street, across from a residential area, it's got to be 17'; so rather than asking for 4', they actually need 15'. Correct? On Tobin. They're saying that they don't need the variance because they don't have the 4' green space between...

Brian Pinkerton: That's a different section, Ma'am. That's under landscaping.

Debbie Pfiel: No, 5.9 actually states where residential district and a non-residential district are separated by a street; there should be provided in the non-residential district, the landscape setback or yard area at minimum of 15' in the depth.

Virginia Weeks: Right; not 4'; 15'.

Debbie Pfiel: I'm not sure where the 4' is coming from.

Brian Pinkerton: There are two separate variance requests. One based on the transition yard and then one based on landscaping.

Debbie Pfiel: I'm just in the transition yard now; because it's not one trumps the other. Actually they would have to go for a variance on 5.9.

Virginia Weeks: All right, let's go to parking.

Debbie Pfiel: The kind of parking I have is under 2A, Section 7.2, Off-Street Parking Requirements, states that parking shall not be permitted in the front yard setback areas, except following the site plan review, as provided for in Article 6 of the Zoning Ordinance. The front yard setback off Union is 30' and the majority of the parking area is located within the front yard setback. A portion of the turn around areas at spaces 12, 13, 14, and 16 for the parking area; are located within the front yard setback. The Town would need to determine if the parking is non-conforming, as existing conditions were not submitted. That's a legal question, really; because what is considered non-conforming and what's considered new; since they're getting a new layout in the front yard parking.

Virginia Weeks: Okay, next.

Debbie Pfiel: So it is recommended that Robin would contact the lawyer, since the lawyer is not present tonight nor was she requested.

Virginia Weeks: I believe that under our Zoning Ordinances the parking variance falls under the purview of this Board, not the Board of Adjustment. If I'm not mistaken, most of the variances for parking in the Zoning Ordinance it gives Planning & Zoning the power to excuse those; not the Board of Adjustment; so that's a legal question that needs to be settled.

Debbie Pfiel: Yes, the actual legal question on that item is, is the parking existing there now considered non-conforming, or are they changing the new plan and having to submit more of a non-conforming question, I believe, for legal? Under General Requirements, which is 2B on my letter, under all circumstances, except for single family, a 4' wide area should be provided between the adjacent sidewalk or public right-of-way and all permitted parking areas. Once again, the Applicant is requesting a waiver of variance from this requirement.

Virginia Weeks: That 4' is what I was looking at; it's at odds with the 15' requirement (Article 4); because if this is separated by a street from a residential area, which it is; according to 5.9 Transition Yard Requirements there is a minimum requirement of 15'. Am I reading this correctly, Robin?

Debbie Pfiel: The 15' is stated as a minimum of 15' in depth. The other one is a 4' wide area shall be provided between the sidewalk and the public right-of-way. I don't know if that clarifies it, but if you need further clarification, once again I would refer you to the attorney.

Michael Filicko: Is that where you're asking for 2.5'?

Brian Pinkerton: Yes, that particular variance where 4' is required between the right-of-way and the parking space is where we have approximately 2.64', a little over 2-1/2', of grass between the right-of-way and the proposed parking space; so that where we specifically mention the roughly 2-1/2', it is in reference to the variance for the parking section 7.2.1.

Virginia Weeks: And that's on both Tobin and Union.

Brian Pinkerton: No, that's all on Tobin.

Virginia Weeks: Along Tobin. The separation on Union is 4'? The grassy area along Union Street, is that 4'?

Brian Pinkerton: Yes, that's actually slightly in excess of 4', I believe.

Ed Kost: The 4' area between parking space 14 and the right-of-way on Union Street, that's 4'. Is that what you said?

Brian Pinkerton: Yes.

Virginia Weeks: I don't think so. Bob, is that between parking space 14 and the sidewalk, is there a 4' grassy place?

Debbie Pfiel: He's digging his scale out.

Virginia Weeks: Perhaps it is, as 1" is 10'. I'm sure it's okay.

Brian Pinkerton: Along Union Street, the existing edge of the parking remains essentially unchanged from what it is now vs. what's proposed. And along Tobin Drive, currently there is zero separation between the right-of-way and the parking.

Virginia Weeks: Debbie, do you want to continue?

Debbie Pfiel: In Item 2, the Applicant is proposing 16 parking spaces based on the layout of the property; two of the proposed spaces are handicapped; the Applicant

is required to have 29 parking spaces and has not met the requirements based on the below calculation of 7.2.2, Required Off-Street Parking Spaces. Medical Office requirement is 1 space per 200 sq. ft.; so they would be required to have eight spaces; the restaurant is 1 space per 100 sq. ft.; so they would be required to have twenty-one parking spaces; the Applicant is requesting a waiver of variance for this requirement.

Virginia Weeks: The lighting in the parking lot. Do you want to continue?

Debbie Pfiel: Yes. The outdoor lighting of off-street parking lots should be designed to shield adjacent properties from glare and it is unknown if this requirement can be met at this time. Once again, it's conceptual, so it's pretty early for that. And the last one for the parking is the Planning Commission may, without requiring a variance, authorize the joint use of parking facilities upon a finding that up to 50% of the parking area spaces required for a specified use; which is primarily an evening activity. This should be discussed if it's an option for the Applicant with the Planning & Zoning Commission.

Virginia Weeks: Thank you. Can we discuss parking now? Anybody have anything to say?

Debbie Pfiel: I think Mr. Kerr has some comments on parking, as well.

Bob Kerr: Bob Kerr, Cabe Associates. On my memo, it's the item number 2; it's not only parking, but part of the driveway structure. One of the variances they're requesting is 25' from the service window to the right-of-way. This would result in backing up traffic because of not having sufficient room for several cars before they can pull out. That can basically work all the way around through the parking area. As Debbie just said about the joint use, Section 7.2.3 allows joint use parking when "it can be proven that staggered hours of use would permit joint use". The Commission should determine the hours of operation before considering whether joint use of the parking should be allowed. There's no information provided as to when the hours of the two businesses would be, but if they overlap then it's difficult to say that it's an evening activity that wouldn't free up parking spaces. Section 7.15.3.2 requires all drives, and this is a section on drive-ins, to be no less than 20' and no wider than 30'. The drive-thru lane as shown would only be 11'. This means once you get in line, you can't change your mind. You basically have to go through. There's also no place to park, so that if you have an order that's delayed, you basically back up the entire section.

Brian Pinkerton: I do have a question about that particular comment, if now would be an appropriate time. As I understood the Zoning Code Section 7.15 pertained to site access and basically entranceways and access ways, but 7.16 specifically addressing drive-in use regulations under 7.16.1 says that all drive-thru lanes shall be distinctly marked and shall be separate from circulation lanes, which is why we considered 11' to be appropriate for the drive-thru lane because it's not considered a primary circulation lane.

Virginia Weeks: For myself I think that's way too narrow. Just way too narrow. Not only can you not pass, but if ever, God forbid, there's an accident, a fire, there's no room back there for people to get out of the way. I think 10' in my own personal opinion, is very narrow. Anybody else taking up on that?

Ted Kanakos: No, I agree with you 100%.

Michael Filicko: I have another question in regards to the drive-thru. Gentlemen or Bob, how many cars will actually fit in the driveway of the drive-thru parking lot?

Brian Pinkerton: The total length is 120' from the beginning of the lane to the pick-up window... Oh, 140', so...

Virginia Weeks: Actually, we have a problem there also, as far as I'm concerned, because 20' of that is in the middle of the turn around space in the area for the parking lot. You're starting your waiting lane way out in the middle of the area, at the end, right in front of the dumpster. How is number 7 going to pull out and turn if there are cars there? And, how is a garbage truck going to get to the dumpster, that's the start of your stack-up lane?

Brian Pinkerton: When we drew it, at this concept level, we envisioned space 7 being able to back straight out beyond the final car in the stacking lane, beginning their turn once they've cleared the rear end of that car and then pulling forward to leave.

Virginia Weeks: That's just really clumsy to me. Bob, do you have any opinions on that? The thing is they need, what is it 140'. If they don't extend into the area where the arrows are going both different ways, back in front of the trash things, they only measure 120' and they're 20' short on the stack up lane. If cars are pulling out; if you have a truck; if you have somebody wanting to get into the loading area, which is behind the drive-thru order station, I mean how is somebody going to get to the loading area? The whole thing seems really cumbersome to me. Am I looking at this wrong?

Bob Kerr: No Ma'am. The 80' and then the 60' is a requirement; backing out of space number 7, although it's difficult, I think you could do it. There may be a time when you would have to wait if you're in space number 7. There's nothing in the Code that specifically says how that's measured, so from a pure Code Standard, it's probably okay as shown. From an overall layout, there are just a lot of problems with the site layout. As you said, the loading, if somebody tries to unload something during the open hours, you can't use the drive-thru. If it's any type of a large truck, it can't make the turn.

Brian Pinkerton: If I may try to answer that question, just a little bit. Having discussions with our client, who was unfortunately not able to make it tonight, it's our understanding that deliveries that would use the loading area would be during off business or certainly off-peak hours and we've actually done this following an example of a similar facility he has in Harrington and per his example and request, that it kind of worked that way. He's had experience with it.

Virginia Weeks: That doesn't really work for me. He may own it now and he's leasing it out, but that's a Code Enforcement headache. I just find that really awkward that the loading dock is behind the drive-thru order station. There's only 10' driveway and you want to get a big truck through there and you want cars to order and you want them to wait at one window for their goods. I think this is really way too much for the space. Let's go on. Anybody else have any comments?

Bob Kerr: Yes, I had one more item on parking. There's a combination or a mix of parallel and perpendicular parking in front of the existing building. Spaces 15

and 16 are parallel, where the ones right up against the building are perpendicular and it just means when somebody backs out of something like 10, 11 or 12, they're aiming at the side of somebody's car and if they happen to open their door at that time, it's one of those things that we just don't like to see in good traffic flow. Typically, something like this is going to have a large turnover, so there's a lot of traffic movement going on in the parking lot when there's a fast food restaurant and there's just a concern there that minor accidents or fender bender type things could occur.

Brian Pinkerton: If I may, can I provide some insight there? I certainly understand what the comment is trying to address and from our design standpoint if you look at the drive lane between the stacked parking and the parallel parking, you've got 24', which is exactly what you would have in a standard parking lot, so the vehicles backing out of their space to make their turn and exit, would be exactly the same, whether those cars behind are parallel parked or stacked; in our opinion I don't see an increased risk of fender benders due to the orientation given how wide the access lane between the sets of parking is.

Virginia Weeks: It also needs a variance, I believe.

Brian Pinkerton: For what Ma'am?

Virginia Weeks: Those parking spots. The other thing I wanted to know, Bob would you clarify this for me, is 8' wide a legal handicapped spot?

Bob Kerr: What they're showing is the 4' aisle in between and that makes it a legal handicapped spot.

Virginia Weeks: Even though it's striped for no parking.

Bob Kerr: It's part of the handicapped parking. Basically, with the handicap you still have a 10' space; because 2' of the 4' go with each space on each side.

Virginia Weeks: Does the Commission have any more comments at this point?

Ted Kanakos: I have a question and this goes way, way, way back before all of this was presented. I'm questioning that this parcel as a commercial property was an existing medical office. Is it appropriate for anyone to come in and put another type of business on that commercial property, or can they just enlarge the medical facility?

Virginia Weeks: This is a legal question, but, my understanding would be that it is a commercial site, its zoned C-1, anything that's allowed in C-1, as long as it fits within the parameters the zoning ordinance, is permitted.

Ted Kanakos: Nobody is splitting the property in any way. They're using the entire property by cramming this other thing in there.

Virginia Weeks: The density allows this amount, whether it is safe and whether they should be granted the variances they are looking for, is another question. The density allows that in one hand and it takes it away in another, in the amount of parking you need.

Ted Kanakos: I see this as being extremely problematic. We're talking about parking space number 7; I'm looking from 1 to 7 as having a problem backing in and out. Number 1 is going to be backing into traffic that is coming right in and out. Talk about being crowded; the garbage guy comes in; the guy delivers the hamburger rolls; somebody is stuck in line; and then they want to use the doctor's

office with it; with buses and handicapped buses and facilities; this just seems to be a mess.

Virginia Weeks: To be honest with you, my vote would be against this, because for another thing, I have no intention of allowing shared parking here. It says we may; it doesn't say we have to allow it. This is a piece of property that was zoned commercial in order to allow a needed doctor's office in Milton, years ago. The fact that it remains commercial is unfortunate but it's there, and we have to allow it to be commercial. We do not have to allow variances to facilitate a very busy business in an area that is completely surrounded by residential properties. I think we have to be supersensitive with this, because it is surrounded on all sides by residential property. That's my opinion. This is a night of opinions, no votes.

Does anybody else have questions on parking; any more comments?

Ted Kanakos: Yes. We more or less touched on the parking, but I'm also concerned about the parking around the perimeter. You can park on Union Street on that side of the medical office now. You can park on Union and you would be able to park on Tobin Drive. You can go in and out on Tobin and come out the drive-thru. You can park across the street from that entrance. You can have an awful lot of parked cars in, out and around. I would hate, as an individual, living in this Town in a residential neighborhood, to wake up one day and find that I'm in the middle of a McDonald's parking lot, and everything that comes with it; the trash, etc.

Virginia Weeks: I'm looking at a trash dumpster that's got no setbacks on somebody's garden, separated by a fence.

Ted Kanakos: We also have a cemetery across the street. I would hate to see kids hanging out there, because that's the larger peripheral area for sitting around and having a burger. I just think there are many, many, many problems with this.

Thank you.

Virginia Weeks: Does anybody else having anything to say?

Louise Frey: I agree with both Ted and Ginny that this is a very crowded use for this small piece of property.

Virginia Weeks: Shall we continue, Debbie?

Debbie Pfiel: Under Landscaping, I have some very conceptual comments. On Page 2/3, Item 3 Landscaping: landscaping requires at least 10% of the area. The conceptual plan does not show a detailed landscape plan at this time and it's not required at this time, but I wanted to get this comment out there for preliminary design. Under 3B, Buffer Landscape Requirements: the particular type of buffer and landscape treatment shall be determined by the Planning Commission to meet the intent of this section. The Applicant has not provided planning for landscaping on the plan. We'll need further clarification or direction from the Commission during the concept review process. If there is any type of buffer and landscaping, it's always recommended that you bring those up at conceptual. That way they can design for preliminary. Under that same section, it requires the landscape area to be contiguous to the public right-of-way, extending the depth to 10', shall be provided. Landscaping, including trees, should also be used to screen the buffer parking, dumpsters, freezers and other accessory uses. The Applicant is requesting a waiver of variance for this requirement. Section C-

7.16.3 – Drive-In Regulations: states all uses shall maintain a minimum distance of 60' from the service window to the public right-of-way or interior parking. Once again, the Applicant is requesting an additional waiver variance for this requirement. Section B, if you've ever read my letters, it says "same standard". Sometimes there is a conflict in the code on the landscaping chapters, so I always say this section should be clarified by the Town Attorney, as far as requires 8% of the lot area shall be devoted to landscaping and this section may conflict with the other requirements. That's my standard language. That's all I had on landscaping and I don't think Mr. Kerr had any comments on landscaping.

Virginia Weeks: Any thoughts on landscaping folks?

Ted Kanakos: I think it's extremely early to talk about that, considering that we don't even know if they're going to get 2-1/2' on Tobin, that little grass area. I think that should be put off a little bit. I don't want to give the impression that we're talking about this section and you have approval for everything else. I just want to go on.

Virginia Weeks: Anybody else? Under Structure, please Debbie.

Debbie Pfiel: Under Structure, this information was not provided for the review. It's recommended that the Applicant should ensure the structure's design in accordance with the character of the Town. It is further recommended that the Applicant assure ample architectural features are used to include all sides of the building, as it is a corner lot property. Several building enhancement features could be used, such as window shutters, planter boxes, overhang entrances, ornamental trim, window awning, multiple color coordination, dormers, columns, front porch, etc. My basis for this comment is its unknown if this is going to be a chain or if this is going to be the bright neon colors of a fast food restaurant and I just hope that the architect or whoever is going to be designing this structure, really takes into consideration that this is surrounded by a residential neighborhood. This is a very preliminary comment, but I would like it on the record up front.

Virginia Weeks: Signage. I think it's probably a little early to talk about that.

Debbie Pfiel: Same thing. The reason we bring these comments up, is at concept you want to go from A to Z and give them input. We know that this project, which you will see in my comments, that I feel that the property is being maximized for development and there's a lot, however, that I'm not able to give recommendations to the Board for the variances. It's up to the Board of Adjustment; but my recommendation is this is surrounded by residential and I'm worried about the sign and the structure. Those are the two things as far as preserving the character that I would really like to start to look at if the project moves forward.

Virginia Weeks: Drainage, how about that Mr. Kerr?

Bob Kerr: Yes, they're showing a proposed stormwater management on the west side of the property. It appears to be kind of small for this size property; certainly they have not done a design at this point; it could be that most of it would be self-service; but the concern was that if the stormwater management area has to grow, that's just going to impede the rest of the property that much more and take something else away.

Virginia Weeks: Exactly and even on one so tiny, do they need to have variation fountains?

Bob Kerr: No, they do not necessarily have to have that.

Virginia Weeks: So this could become a wonderful breeding pond for mosquitos, and so on, because it would be more or less stagnant.

Bob Kerr: No, a properly designed stormwater system should not have those problems and that's something that Soil Conservation looks at and as far as the actual design, at this point, there is no indication and it's not required, whether it's going to be a dry pond, a wet pond, or exactly what. They're just showing an area along the west property line to be the stormwater management and it appears to be that it's just small and if it's going to be only in that area, then it gives me concern that as they go through the project, if they were to get preliminary approval down the road, that that area has to grow and that's going to just push something else up tighter against another property line, or something.

Brian Pinkerton: Just to ease your mind, on the mosquito question, we know there's no way that area is big enough to be a pond, either dry or wet. That area would have to, at this point, be a bio-retention or bio-filtration area, which in its nature doesn't have standing water. At this level, with the proposed build out of the site, there would be no anticipated standing water, as part of the stormwater management design.

Ed Kost: There is an existing building, existing parking lot; does this proposed stormwater retention area take into account the existing building, which apparently doesn't have anything, and the new building? Would that be a requirement?

Bob Kerr: Typically, Sussex Conservation District, when they look at it, would require that once you start making changes to the property that you deal with the stormwater from the entire property. What they look at is the pre-development and post-development and because certain parts of it are existing, there may be some leeway there, but essentially they will have to deal with all the stormwater.

Virginia Weeks: Bob is there anything else on your list that you wanted to mention? I think we pretty much covered it.

Bob Kerr: Just quickly, because it's a couple of things that we always look at. There is a water main in front of the property, so there is sufficient water. The one thing that I didn't take the time to look at was the current fire hydrant flows, whether that would be sufficient, especially for a commercial area the requirements are somewhat higher, when you get to the fast food, there's always concern of even more. There is a sewer line available on Tobin Drive; Tidewater Environmental Services would be the contact, now that the Town no longer operates the wastewater system. The only other one that I had was on the dumpster, and I believe you mentioned it Mrs. Weeks, but its right up against the property line.

Virginia Weeks: Isn't it supposed to have a 4' buffer behind it, or a 6' buffer, so close to residential? I don't think you can put a dumpster in a buffer area, can you?

Bob Kerr: I would think that there is a setback there and you have to be outside the setback and then there's also the concern that a trash truck has to back out an awful long way once they pick up the trash.

Virginia Weeks: Exactly, right into the waiting area to place your order. Debbie do you have anything more?

Debbie Pfiel: The only comment I have is under Miscellaneous. I do want for the record that it appears the Applicant is requesting a minimum of five variances, for this project. That's five against your current Code, so I just want to say, it has been a while since we've seen a project like that and I do feel the proposal is maximizing the property for development. I am also concerned about careful consideration once again, to the character and type of structures in the surrounding neighborhood, when designed. That's all from the Town Planner.

Virginia Weeks: I'm going to go down the aisle now and ask everybody if they have any comments for these people.

Ted Kanakos: I basically have stated the concerns I have. Parking and space and there are probably a dozen, if not more, problems with this and as Debbie Pfiel has said, they're maximizing it to the nth degree.

Virginia Weeks: They're over maximizing it because they need variances.

Ted Kanakos: Well, they need the variances, which is another issue. We don't usually get a request for this many for this type of thing. I just feel there are an awful lot of problems that would have to be addressed and I don't know how far and to what degree these gentlemen are with their client.

Al Perkins: I would agree with the comments that have been made so far, so I'm not going to repeat what was said. I think it's a lot of congestion in a small area and an awful lot of problems to overcome. I'm going to leave it at that.

Ed Kost: I agree parking appears to be a major consideration. It looks like they're asking way too much.

Michael Filicko: Gentlemen, I'm the longest serving member on this Committee, and we have a history of being willing to work with people that come into the Town. It seems to be that you're asking for way, way too much on such a small space and I think given the comments that are made tonight, even though we are not officially voting for anything, my opinion would be, I don't know if I would go any further, if I were you, with this as it's drawn up now. That's all I have.

Louise Frey: To me this is spot zoning and the neighborhood is the victim of spot zoning and I think by adding an additional fast food restaurant, you're only increasing the density and I think it's a lot of variances that are being requested.

Virginia Weeks: I, as you know, view the project as riddled with problems, parking, the lanes, the service lane, where the trash is, the lack of buffers; I think it's way over intense and when it comes, I'm not sure I would be very willing to let you share parking because you haven't given us any reason to do so. As this stands now, it's not looked upon favorably by me. I think you need to go back to the drawing board.

Brian Pinkerton: If I may just one final for the record. Challenges aside, I would like to state for the record, that of the five variances, which we've mentioned several times, only two of those have to do with the proposed development. Three of the five variances are simply asking permission to continue with some

existing non-conformities and in fact, slightly improve them, to the extent that we can. I just wanted to add that for the record.

Virginia Weeks: This idea of approving such a narrow drive-thru of 11' where there is no room for escape; where it's also the loading dock; where it's the service window; where the trash is right on top of it; no way, guys. No way. It's not good planning. I find that very problematic. And the variance from the window to so on; some of these variances go to the Board of Adjustment; some of the parking is done here. If you come in for Preliminary Site Plan Review, I would and I speak for all the Commissioners, like to see you having gone to the Board of Adjustment first, to get what variances you need, before you come to us. Because, that just saves everybody time.

Brian Pinkerton: Understood and thank you very much.

7. Possible Vote and Changes to Section 4.8.8, Paragraph 2 of the Zoning Ordinance

Virginia Weeks: I wrote something up here and I'll pass it out to everybody. This has to do with the LPD. No public hearing shall be required for approval of amendments to the Record Master Plan, unless changes proposed, significantly alter a provision of the Approved Record Master Plan. You'll remember when Mr. Dyer came in and wanted to move 77 units from Phase II and III into Phase IV. I personally had a concern with the Board being put in the position of having to determine what is a major or a minor change; or what is significant or non-significant change; without any guidelines; no description of a minor change; no description of a major change. I consequently met with the Town Manager and Robin, at a meeting, and we all agreed that we would try to get some language together and give it to you for your review and to see what you think of it. I wrote this; my point of writing it, which says that a public hearing shall be required for approval of amendments, was simply that I come from an area of the Town Hall, where if somebody has bought into, for example, in Cannery Village, a design and a way of living that he thinks is such or into Wagamon's West, or Heritage Creek, or any of the others; if in the end there's going to be a change of things, like all of a sudden, the area under 77 dwelling units is now becoming available; what's going to happen to it, etc., etc.; they should have the right to address us, before Preliminary Site Plan; if we're going to allow these changes. What this does, is that it simply says that in all cases, there will be a public hearing when there is a requested amendment to a Record Master Plan. I would ask that you take it home, look at it, and rework it and if our next meeting isn't too long, we'll discuss it at the next meeting. Does that meet with your approval? I would also like some input from the lawyer and the planner and whoever else.

Debbie Pfiel: Just wanted to make sure that we're authorized to work on this from the Town.

Virginia Weeks: Yes.

Ted Kanakos: I had a question regarding what you just spoke of. I remember that go around with Mr. Dyer. He told us that basically we had no rights. He could do what he wanted to do. It had been agreed on before, with this very sloppy type of work that had been done before. The issue here was what's major, what's minor, when can we call the public to force? When can we let them know; tell the

people of Cannery Village or Wagamon's West Shore that this is an issue and they can't ride roughshod? I was really disturbed over the fact that people buy and then three years later, all the renderings that they looked at and bought from, and what they were promised, whether it is a swimming pool, and these various amenities that are not there, like paving the streets, these are 5-7 year old developments, they still have to pave streets. It's really a problem. Maybe if we got the people out more often, to voice their opinion, and not let these people change a lot of things, and enforce things that they should be doing.

Virginia Weeks: This is just to get us out of the conundrum of significant and non-significant and I think just let everybody have a say. I can't imagine that 500 people would show up to speak. This is not a well attended group here.

Ted Kanakos: The people who show up are the ones that are affected.

Virginia Weeks: The other thing, we spoke with the Town Manager, for your information, and from now on we are going to do Resolutions and they will be done in the Town Hall when we have conditions or when we have a negative vote on something. Mr. Kost will be very careful when somebody gets up to speak to us and says, we're going to put in X amount of trees and we're going to give the City this and the Town that. During the meeting, he will be making a list of all those things, so we can incorporate it into the motion and then it would be incorporated into a Resolution and the Resolution will be put in. Any other business?

Ed Kost: In my mind, the major problem we have, I live in Cannery Village, is that when Cannery Village was approved, there were no conditions put on that stating if you're going to build a pool, every time you sell a unit, a certain amount of money has to be put aside to pay for it; when a certain section of the development is complete, this street should be paved. I live there and one of the things that really worries me is that the developer is going to go bankrupt; walk away; and then, who is going to pave the streets or complete anything else? I don't know if the Town requires a performance bond.

Virginia Weeks: I believe there is a bond.

Bob Kerr: We're kind of off scope tonight, but if I could just add something real quick on there, on sub-divisions there is a bond that is required by the developer and the Town holds that bond and often times, I as the Town Engineer, don't want to see the final paving, because the first street repaved is the entrance and then you have all the construction traffic come in and then it breaks up and once it gets that final paving, the developer can turn it over to the Town. At that point, with all the construction traffic, if it breaks up, it becomes the taxpayers of Milton who must deal with the problem of the construction traffic that has torn it up. We delay that final course of paving until the majority of the houses are constructed. It's very important to do that. It benefits the Town greatly. I know it's a problem while it's under construction. It's something that we try to stay after developers to fix pot holes and things that develop in the base, but it's one of the joys of moving into a new neighborhood if you're the first one in you're going to have to live with construction activity.

8. Adjournment

Virginia Weeks: Is there a motion to adjourn.

Louise Frey: I make a motion we adjourn.

Ted Kanakos: Second the motion to adjourn.

Virginia Weeks: All in favor. Opposed. Motion carried. Meeting adjourned at 8:00 PM.